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MAY 26 1992

May 26, 1992

Federal Communications Commission
Office of the Secretary

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

92-90 /

RE: In the Matter of The Telephone Consumer Protection Act of 1991

Dear Ms. Searcy,

Attached are the original and five copies of the Comments of Sprint Corporation in the proceeding referenced above.

Sincerely,

Jay C. Keithley
Vice President
Law and External Affairs

Attachments

JCK/mlm

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MAY 26 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
The Telephone Consumer)
Protection Act of 1991)

CC Docket No. 92-90

COMMENTS OF SPRINT CORPORATION

SPRINT CORPORATION

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May 26, 1992

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SUMMARY

Sprint supports the continued use of telemarketing as an important and effective sales and ordering tool. As global competitiveness becomes even more important, efficiencies in sales and distribution become imperative. Thus, Sprint believes that artificial restrictions on the benefits of telemarketing should not be imposed by the Commission.

Telemarketing complaints, to the extent they exist, revolve largely around the use of auto dialers for the delivery of pre-recorded advertising messages. Sprint believes that market economic incentives to self-police "do not call" lists will produce appropriate behavior by telemarketers.

The development of a nationwide "do not call" data base will be overly expensive in comparison to expected benefits. In addition, anything less than a data base that is frequently updated would prove inadequate. An online, frequently updated data base would be even more expensive. Industry self-policing through the use of internal "do not call" databases is more appropriate.

Facsimile broadcast service providers should be exempt from any liability for the distribution of unsolicited facsimiles order by facsimile originators. Facsimile broadcast service providers neither originate these facsimiles nor create the distribution list. Thus, liability should reside in the originator.

MAY 26 1992

Federal Communications Commission
Office of the Secretary

COMMENTS OF SPRINT CORPORATION

I. INTRODUCTION

2. Telephone Consumer Protection Act of 1991 ("TCPA"), Public Law 102-243.

and distribution become even more important. As the Commission noted, unsolicited telemarketing calls generated \$435 billion in sales in 1990. This is a 400 percent increase since 1984. The Commission stated that "many consumers find such contacts beneficial and actually purchase the goods and services offered." Indeed, the Commission concluded "it is not in the public interest to eliminate this option for consumers."³

Sprint believes that the Commission should not artificially restrict the benefits that modern operations, such as telemarketing, bring to American industry. These efficiencies in sales and distribution have great international competitive value and additionally provide benefits to purchasers of telemarketed products. To the extent that telemarketing has caused customer complaints, Sprint agrees with the Commission that the majority of the problem is centered on auto dialer and pre-recorded message delivery equipment and not on live telemarketers.⁴ Further, Sprint believes that telemarketers have the economic incentive to self-police their operations and to endeavor to avoid

3. NPRM at para. 24. See also S. Rep. 102-177, 102nd Cong., 1st Sess. 2-3 (1991), S. Rep. 102-178, 102nd Cong., 1st Sess. 2-3 (1991), and H. Rep. 102 102nd Cong. 1st Sess. 7-10 (1991). [accompanying H.R. 1304].

4. NPRM at Para. 24.

repeated contacts with potential customers that request not to be contacted by the telemarketer.⁵

II. AUTO DIALER RULES

The TCPA, Section 227(b)(1), generally prohibits⁶ the use of auto dialer technology to reach emergency, health care, law enforcement, guest room, paging, cellular and residential numbers. The Commission, in Section 227(b)(2)(b), is given authority to remove this restriction for all but commercial calls containing unsolicited advertising.

The Commission proposes to exempt from the auto dialer prohibition non-commercial calls,⁷ and commercial calls that do not contain unsolicited advertising.⁸ Sprint agrees with the Commission's reasoning in support of this exemption.

The Commission additionally proposes to allow the use of auto dialers in connection with commercial unsolicited adver-

5. Both the United Telephone companies and Sprint Communications Company, L.P. maintain a "do not call" data base that is used in developing their telemarketing calling programs.

6. TCPA Section 227(b)(1)(2) allows auto dialer calls to all customers for "emergency purposes or with the prior express consent of the called party." TCPA Sections 227(b)(1)(B) and (b)(2)(B) allow the Commission to exempt residential calls "not made for commercial purposes" and commercial calls that "will not adversely affect the privacy rights" and "do not include the transmission of an unsolicited advertisement."

7. NPRM at para. 10.

8. Id. at para. 11.

tising calls to former or existing clientele. Sprint urges the Commission to define this exception with more specificity.

Sprint and other users of the telecommunications utilize auto dialers as a cost control productivity tool. For instance, in debt collection calling, auto dialers are used to reduce the time spent in connecting a pre-existing customer with the collection representative. In outbound telemarketing, auto dialers may be used to initially dial the potential customer, and the customer may occasionally be asked by a pre-recorded message to wait momentarily during occasional overflow situations for a live customer service representative.⁹ In both cases the auto dialer is used as a productivity tool that lowers the cost of providing service. In neither case is an unsolicited pre-recorded advertisement delivered to the customer. Thus, the potentially objectionable intrusion into the privacy of the customer is minimized through the use of live personnel that actually deliver the real content of the call to the customer. In light of the use of live personnel to deliver the real content of messages and the cost savings inherent in this productivity tool, the rules should

9. Sprint Communications Company, L.P. engineers its auto dialers to provide, at peak times, at least 94 percent automatic connection to live customer service representatives with requests to wait momentarily for a live customer service representative occurring only occasionally. Sprint believes a 90 percent initial connection to live customer service representatives rate should be the minimum acceptable standard in the industry.

clearly allow auto dialers and pre-recorded "wait momentarily" for live customer service representative announcements.

III. FAX ADVERTISING

The Commission is charged with implementing TCPA Section 227(b)(1)(c), prohibiting the use of "any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine." Sprint believes this provision of the law restricts advertisers and understands that the Commission must enforce that restriction. The Commission, in that regard proposes Rule 64.1100(a)(3). This rule states:

No person may use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

This proposed Rule does not recognize the significant difference between facsimile advertising originators and facsimile broadcast service providers and needlessly and unreasonably restricts broadcast facsimile services. Sprint TeleMedia, an enhanced services provider, offers SprintFAXSM facsimile broadcast service. This service allows a customer to provide a facsimile distribution list to Sprint TeleMedia. When the customer sends a facsimile to Sprint TeleMedia with directions to broadcast that facsimile to the distribution list, Sprint TeleMedia performs this enhanced service. Sprint TeleMedia neither changes the initial substantive content of the customer facsimile nor broadcasts the facsimile to locations other than those ordered by the

customer. Thus, the customer "uses" the enhanced services provider "carrier" to forward its facsimile.

SprintFAX facsimile broadcast service has been a success in the market because many customers appreciate the convenience of sending one facsimile to Sprint TeleMedia and having the broadcast service provided by an enhanced service provider. This service allows the customer to send one facsimile rather than multiple copies, frees the customer facsimile machine for other uses and saves valuable employee time.

Sprint TeleMedia merely provides a service to facsimile originators for their use in delivering the facsimile to the customer's broadcast list. Because Sprint TeleMedia does not change the content of the facsimile or independently develop or edit the broadcast list, it is unreasonable to hold Sprint TeleMedia liable for an infraction of the "unsolicited advertisement" facsimile prohibition. The customers that develop the original facsimile and the broadcast list are reasonably held responsible for such violations, but service providers that do not determine content or distribution should be exempted.

To cure this defect, Sprint proposes that Rule 64.1100(a)(3) be amended to read as follows:

No person may use a telephone facsimile machine, computer, or the device to send an unsolicited advertisement to a telephone facsimile machine. This section does not apply to a carrier or enhanced services provider that forwards, at a customer's direction, an unsolicited advertisement.

Another section of the Rules governing facsimile transmissions also should be amended. Rule 68.318(c)(4) requires "identification of the sender" and includes in this requirement the "date and time" the facsimile is sent, "an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or such business, other entity, or individual." In the case of enhanced service providers like Sprint TeleMedia, this section causes concern.

It is not certain whether Sprint TeleMedia is required to provide the required information or whether the facsimile originator, the customer user of facsimile broadcast services like SprintFAX, should provide the information. While Sprint would support a rule requiring that the person receiving a facsimile transmission have access to the required disclosure data from the original sender, it would not object to dual disclosure by both the originator and the provider of facsimile broadcast service.

IV. TELEMARKETING "DO NOT CALL" PROCEDURES

The TCPA directed the Commission to consider whether to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The Commission is charged with comparing and evaluating alternative methods of protecting residential customers' privacy

interests. The Commission sought comment on the use of electronic databases, telephone network technologies, special directory markings, and company and industry "do not call" systems.¹⁰

Sprint believes the expense associated with development of a nationwide "do not call" database likely far exceeds the intended benefit. In addition, if the database is to be used on a timely basis, frequent updates to the database must be made and the database would need to be queried daily. If the database were not updated quite frequently, individuals that seek "do not call" status could continue to receive unwanted calls for several months. If an on line system were developed, with frequent database updates, the cost of running the system would rapidly escalate.

In addition, as the Commission recognized, these customers will continue to receive a significant number of possibly unwanted calls from charitable institutions, colleges, benevolent associations, government, election campaigns and pollsters. Customers that request "do not call" status pursuant to a nationwide database would likely be confused and angered when many of the "telemarketing" calls that the customer wished to block, legally continued. In Sprint's view, rather than the high cost of such a

10. NPRM at para. 27.

database, with its unfulfilled "do not call" promise, industry self-policing would be preferable.

In Sprint's view, the expansion by telemarketing companies of self-policed "do not call" lists is the appropriate mechanism to foster residential customer privacy interests. Many telemarketing concerns currently maintain such an internal database that was created either from its own previous contacts with customers or data provided by others. Telemarketers, desiring a good relationship with customers, and recognizing the cost involved in placing unwanted calls, should voluntarily and aggressively work to improve this self-policing mechanism.

The Commission also presented two further alternatives-- network technologies and special directory markings. Sprint does not support the development of a network technology that would be used to block telemarketing calls. In Sprint's view, such a plan would be virtually unworkable from a telephone numbering perspective, because all telemarketers might be assigned the same telephone prefix. In cases where a telemarketer was performing commercial solicitations one day and charitable solicitations the next, such a scheme could not work. Additionally, the development and deployment of universal blocking scheme would prove

extremely costly. For instance, the installation of software based Caller ID blocking in an end office¹¹ requires \$40,000 in expense according to estimates by the United Telephone companies. One could assume similar software expenses for telemarketing blocking at the end office level. In addition, significant hardware expenses may also be required. Because of the high per end office expense, expanding telemarketing "per line" blocking across the country would prove very expensive.

Special Directory Marking appears to be an unworkable method, as well, unless it is coupled with a national database. Because most directories are only published once a year, markings cannot provide timely updates. Additionally, because of the expense of a national database, this option is overly expensive for telemarketers without producing any reasonable public interest benefit.

CONCLUSION

Sprint supports many of the Commission's conclusions in support of telemarketing, but urges some changes to the rules for the use of auto dialers. Sprint proposes that the Rules dealing with facsimile machines be amended to recognize the carrier

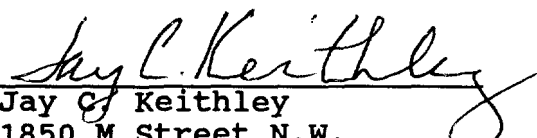
11. The United Telephone companies serve approximately three percent of the nation's local access lines through over 1,100 central offices. Approximately one half of these offices serve fewer than 1,000 access lines. Thus, if \$40,000 in software is a reasonable approximation of per line telemarketing blocking expense in each United Telephone end office, the software only expenses to United Telephone would be over \$44 Million for only three percent of the nation's access lines.

status of facsimile broadcast service providers like Sprint Tele-Media. These providers should be exempted from the facsimile rules insofar as they simply act as an intermediary for the facsimile broadcast of customer information to customer designated locations. Finally, Sprint supports the use of "do not call" lists developed by telemarketing concerns as the appropriate method of protecting the public from unwanted telemarketing contacts. A nationwide database, network technology alternatives, and directory markings are overly expensive and cannot be reasonably expected to provide the desired public interest benefits.

Respectfully submitted,

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